The final result is so interesting that the Review copies it in full.

"Cases of other courts were cited in the decisions contained in the latest volumes of reports from forty-five States (including all the newer States, as well as the older), as follows: —

United States	1669	Georgia	92
English	1594	Tennessee	89
New York	1424	Kentucky	87
Massachusetts	1268	Nebraska	78
California	805	Mississippi	70
Pennsylvania	532	South Carolina	66
Illinois	471	Virginia	66
Michigan	385	Colorado	62
Iowa	355	Louisiana	59
Indiana	317	Nevada	58
Missouri	306	Arkansas	53
Wisconsin	303	Rhode Island	39
Maine	230	Oregon	39
Minnesota	215	West Virginia	34
Ohio	207	Arizona	22
Connecticut	206	Montana	21
New Hampshire	205	Idaho	15
New Jersey	205	Florida	14
Alabama	163	South Dakota	13
Kansas	158	Washington	12
Vermont	151	North Dakota	9
Maryland	131	Delaware	8
Texas	126	Wyoming	2"[1]
North Carolina	103		

RECENT CASES.

AGENCY — FRAUDULENT ACT OF BANK OFFICER — PRINCIPAL NOT BOUND BY THE ACT OF KNOWLEDGE OF SUCH OFFICER. — The vice-president of a bank placed notes given by his father payable to the bank among the assets of the bank, to replace some stock belonging to himself which had been objected to by the bank examiner. The stock was afterwards taken back by the vice-president as payment of the notes, and replaced among the assets. All this was done without the knowledge of the other bank officers. *Held*, that the bank was not bound by this payment of the notes, but they were still valid against the father. *Findley* v. *Cowles*, 61 N. W. Rep. 998 (Iowa).

The case seems perfectly supportable on the ground that the vice-president was not acting within the scope of his authority in receiving stock in payment of notes, or that the father was implicated in the fraud. But there seems to be no occasion for the application of the doctrine that the knowledge of an agent committing a fraud is not imputable to the principal, though the court rely on this very strongly, citing *Innerarity* v. *Bank*, 139 Mass. 332.

AGENCY — KNOWLEDGE OF BANK CASHIER — EFFECT AS NOTICE. — The cashier of defendant bank mortgaged certain property of his to the plaintiff, it being provided that the mortgagor should have the right to sell, and apply the proceeds in payment of the mortgage. The cashier took the property to market, sold it, and sent the draft he received in payment, to the vice-president of defendant bank, who was acting cashier in his absence, with directions to place it to his credit. The acting cashier applied it in payment of an overdraft on the bank by the regular cashier. *Held*, that the knowledge of the regular cashier as to the nature of the draft was not imputable to the bank, and that it held freed from equities. *Rock Spring National Bank* v. *Suman*, 38 Pac. Rep. 678 (Wyoming).

The decision, which seems clearly right, goes principally upon the ground that the bank cashier was not the agent of the bank at the time of the transaction. But even if

[1] 1 Leg. Bib., N. S., p. 2.

he had been, he would have been engaged in a fraud, and it is now well settled that in such a case notice of the agent is not imputable to the principal. 1 Am. and Eng. Ency. of Law, 423.

AGENCY — LIABILITY OF MASTER FOR NEGLIGENCE OF SERVANT APPOINTED BY A SERVANT. — The driver of a bus, being drunk, was forbidden by the police to drive any more at the time, and ordered from the box. He went inside, and, the conductor acquiescing, induced Veares (a former omnibus conductor) to drive the bus home, and by the negligent driving of Veares plaintiff was injured. It did not appear that the driver and conductor had authority to get another driver in cases of this sort. *Held*, that defendants are liable, affirming the judgment of Chalmers, J. *Gwilliam* v. *Twist & another*, 11 *The Times* Law Rep. 208 (Q. B. D.).

Mr. Justice Lawrence bases his decision on the fact that defendants acquiesced in the driving of Veares, and that he was authorized by the conductor and driver. Mr. Justice Wright, however, goes further and says, "The law is this: that in cases of sudden emergency, the servant may have authority, within the scope of the employment, to act in good faith, and according to the best of his judgment, for his employer's interest, provided that he violates no express limitation of his authority, and no order of the master applicable to the case, and provided that the act be not plainly unreasonable"; the Judge below may have found such an emergency here, and so the judgment will not be disturbed.

No authority is cited by Mr. Justice Wright for this view, and the question seems to be a novel one. There must exist some authority of this sort, for it is not to be expected that the bus is to be driven up to the side of the road and held there until communication can be had with the proprietors. A still more complicated question would arise if this had been a hack.

See NOTES.

AGENCY — LIABILITY OF MEMBERS OF A COLLEGE CLASS FOR CLASS BOOK. — A college class voted at a class meeting to publish a certain book, and elected a member of the class business manager of the publication. *Held*, the members of the class present at the meeting, either voting or assenting to the vote, are personally liable for the expense of publication. The business manager acted within the scope of his employment in contracting with the printer. *Wilcox* v. *Arnold*, 39 N. E. Rep. 414 (Mass.).

Such contracts are so commonly entered into by college classes and other college organizations, that the case is interesting as determining just what is the liability of members.

BILLS AND NOTES — UNCERTAINTY IN AMOUNT. — *Held*, a bill of exchange for the payment of a certain sum "with exchange," is not negotiable. *Culbertson* v. *Nelson*, 61 N. W. Rep. 854 (Ia.).

The authorities on this point are in great conflict, and are well collected in the opinion, which professes to decide the point on strict principle. It is submitted that exchange, like interest, is incidental; indeed, it is difficult to see how the case of a demand note bearing interest can be distinguished from this case. When a note is sold away from the place of making, the question of exchange is always considered. In *Sperry* v. *Hoar*, 32 Iowa, 184, it was decided that the addition of an agreement to pay attorney's fees did not affect the negotiability of a note. The court distinguish the cases by saying that in the latter the amount of money due at maturity was not uncertain, because the agreement referred only to the remedy if the note was unpaid. In *Bank* v. *Laughlin*, 61 N. W. Rep. 473 (S. D.), it has just been decided that such an agreement to pay the expenses of collection rendered an instrument otherwise good in form non-negotiable.

CARRIERS — ARRIVAL AT DESTINATION — TERMINATION OF LIABILITY AS COMMON CARRIER. — Plaintiff shipped goods on defendant's road consigned to himself. He did not reside nor had he an agent at the place of consignment, and his residence was unknown to defendant. The car containing the goods arrived at the place of consignment, and the goods were left on the car for forty-eight hours after arrival, when they were stolen from the car. *Held*, in the case of portable packages of valuable merchandise, the liability of a railway company as common carrier does not terminate until the goods are removed from the cars and placed in its freight-room, ready for delivery to the consignee, and the consignee has had a reasonable time thereafter to remove them. To allow the carrier to terminate his liability for such kinds of goods by any less formal and expressive act would be against public policy. *Kirk* v. *Chicago, St. P., M., & O. Ry. Co.*, 60 N. W. Rep. 1084 (Minn.).

The court take judicial notice of a general custom to deliver this kind of freight from the freight-room, and not from the car. As the goods were not unloaded at all,

and as it did not appear that the carrier made any effort to notify the consignee it would seem that the carrier had not "done all that the law required of him to effect a delivery." Hutchinson on Carriers, 2d ed., § 356.

CONSTITUTIONAL LAW — EXTRADITION. — One who, standing in one State, shoots some one in a bordering State, does not thereby "flee from justice" within the United States Constitution, Art. 4. sec. 2, cl. 2. *State* v. *Hall*, 48 Cent. L. J. 148; 20 S. E. Rep. 729 (N. C.).

See NOTES.

CONSTITUTIONAL LAW — [CANADA] — FEDERAL NEGATIVE ON PROVINCIAL ACTS. — The Manitoba Education Act of 1890, although not unconstitutional under cl. 1, § 22, of the Manitoba Act (Canadian Statutes, 1870, ch. 3; *Winnipeg* v. *Barrett* [1892], App. Cas. 445), is nevertheless subject to be negatived by the Dominion Cabinet under cl. 3 of the same section. *Semble*, that whether or not the conditions justifying a negative exist is a judicial question. *Brophy* v. *Attorney General of Manitoba*, 11 *The Times* Law Rep. 198 (Privy Council).

See NOTES.

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — OLEOMARGARINE. — To prevent deception a statute in Massachusetts forbids the manufacture or sale of oleomargarine in color resembling butter. *Held*, that the statute in its application to sales of oleomargarine brought into Massachusetts from other States is not in conflict with the power of Congress to regulate interstate commerce. *Plumley* v. *Commonwealth*, 15 Sup. Ct. Rep. 154, Fuller, C. J., Field and Brewer, JJ., dissenting. See NOTES, 8 HARVARD LAW REVIEW, 353.

CONSTITUTIONAL LAW — POWER OF JURY IN CRIMINAL CASE. — The jury in a criminal case, although they have the power, have not the right to decide upon questions of law. *Sparf* v. *United States*, 15 Sup. Ct. Rep. 274.

See NOTES.

CONSTITUTIONAL LAW — SALE OF LIQUOR TO INDIANS. — The code of California makes it a felony to sell intoxicating liquors to any Indian, regardless of his citizenship or tribal relation. *Held*, that the law was general and uniform in its operation, and not in violation of any constitutional rights and immunities to which such Indians as citizens of the United States are entitled. *People* v. *Bray*, 38 Pac. Rep. 731 (Cal.).

This provision in the California code is in line with those statutes, whose constitutionality has been upheld, forbidding sales of liquors to minors (52 Ind. 486), persons already intoxicated (126 Pa. St. 602), and habitual drunkards. Such legislation is highly desirable, and a proper exercise of the police power. Black, Intox. Liq. § 42. It is well known that Indians as a class exercise very little self-restraint, and when drunk are especially dangerous to themselves and others. A court would therefore be slow to regard such a restriction as here imposed unreasonable and arbitrary. The case finds support from the Montana court in *Territory* v. *Guyoi*, 9 Mont. 46, though there the Indian was a member of a tribe and not a citizen. Such statutes as those in California and Montana do not conflict with Congressional legislation upon the same subject. Black, Intox. Liq., § 427.

CONSTITUTIONAL LAW — TAXATION — ASSESSMENT. — The General Assembly of South Carolina empowered a city council to assess two thirds of the cost of paving a roadway upon the abutting land according to the frontage on said highway. This was a suit by an abutter to restrain the city council from making the assessment. *Held*, the act authorizing such assessment is opposed to the "law of the land," and is in conflict with the provision in the State Constitution requiring all taxes to be uniform in respect to persons and property. *Mauldin* v. *City Council of Greenville*, 20 S. E. Rep. 842 (Co. Car.).

While denying the right to make special assessments for improvements upon a public street, the court recognized the right to tax the land abutting for the cost of improvments of sidewalks and sewers, as the latter power was early exercised by the colonial legislature, and thereby became the "law of the land." Such precedents would seem sufficient ground for a contrary decision in the principal case, but the court prefer to be consistent and follow *State v. Charleston*, 12 Rich. Law, 702 (1860), where the right to assess for similar benefits was denied.

In holding the assessment void by bringing it within the constitutional provision requiring uniformity, the court are evidently aware of its unique position and pertinently inquire, "Why may not the people of this Commonwealth adopt a domestic policy at variance with the views of others?" There is no reason, of course, if the Legislature sees fit, and the Constitution does not prevent, but as the case is directly contrary to the almost universal doctrine among the other States, even where similar

consititutional provisions prevail, one may advance the query whether this "domestic policy" is really adopted by the people or by the court. Cooley on Taxation, 2d ed., pp. 623, 634-636. Cooley, Const. Lim., 6th ed., pp. 612, 623, 624.

CONTRACTS — OFFER AND ACCEPTANCE. — Plaintiff wrote to defendant, making an offer definite in its terms, and defendant replied accepting the offer. *Held*, that the letters made a binding contract, although it was understood that a formal agreement should afterwards be drawn up and signed by the parties. *Sanders* v. *Pottlitzer Bros. Fruit Co.*, 144 N. Y. 209.

See NOTES.

CONTRACTS — OUSTING COURTS OF JURISDICTION — BENEFIT SOCIETIES. — A rule of a benefit society, to which members subscribe when admitted, provided that the executive committee shall have power to pass on all death claims, and that its decision after a hearing shall be binding on the claimant unless an appeal is taken to the highest council of the order, that the decision of the appeal shall be final, and that no suit in law or equity shall be commenced by any member or beneficiary against such council. *Held*, such a provision is not invalid as against public policy. *Fillmore* v. *Great Camp of Knights of Maccabees et al.*, 61 N. W. Rep. 785 (Mich.).

Unless a different principle applies to provisions of this kind by benefit societies, and provisions as to arbitration in general, the case would seem to be wrong according to the strict English rule and that laid down in Massachusetts. *Reed* v. *Fire & Marine Ins. Co.*, 138 Mass. 572. And no such difference does exist, but the same rules seem to govern both. Bacon on Benefit Societies and Life Insurance, § 94, and cases cited. This being the case, such a provision as that above, which provided for decision by a private tribunal, not only as to the amount of damages, but also as to whether any action lies, would seem to be bad, at least in Massachusetts, and in England before the Act of 14 Vict. c. 138 was passed, allowing such societies to settle their disputes by their own rules and regulations.

CONTRACTS — SUIT BY A BENEFICIARY. — Defendant promised a corporation to pay within thirty days certain debts owed by them to plaintiff and others, in consideration of which the corporation promised to issue to defendant one share of its stock. *Held*, that plaintiff, on defendant's failure to perform, cannot maintain an action against defendant. *Washburn* v. *Interstate Investment Co.*, Pac. Rep. 620 (Oregon).

This decision seems entirely sound. Plaintiff being a stranger to the contract has no privity, and can only sue successfully by making out a case which will bring him within some of the exceptions to the rule that strangers to a contract cannot sue on it. He does not show that defendant has assets in his hands which in equity belong to him, nor does he show that he is the sole beneficiary, for the corporation were benefited by the contract they made with defendant, by which their debts were to be paid, and they could have sued and recovered more than nominal damages. Why allow two suits then? The United States Supreme Court lay down these exceptions to the rule that a stranger to a contract cannot sue thereon, in *Nat. Bank* v. *Grand Lodge*, 98 U. S. 123, where at page 124 they say, "One of them and by far the most frequent one is the case where, under a contract between two persons, assets have come to the promisor's hands or under his control, which in equity belong to a third person. In such a case it is held that the third person may sue in his own name. But then the suit is founded rather on the implied undertaking the law raises from the possession of the assets, than on the express promise. Another exception is where the plaintiff is the beneficiary solely interested in the promise, as where one person contracts with another to pay money or deliver some valuable thing to a third. But where a debt already exists from one person to another, a promise by a third person to pay such debt, being primarily for the benefit of the original debtor, and to relieve him from liability to pay (there being no novation), he has a right of action against the promisor for his own indemnity; and if the original creditor can also sue, the promisor would be liable to two separate actions, and therefore the rule is that the original creditor cannot sue." Some courts recognize more exceptions, and some, as Massachusetts, only the first.

CORPORATIONS — INTEREST OF STOCKHOLDERS IN PROPERTY BELONGING TO A CORPORATION. — Provisions in policies of insurance, that the policies shall be void if the interest of the insured is not the sole and unconditional ownership of the property described in the policies, or if that interest is not truly stated to the companies or in the policies, *held*, a complete defence to actions by the sole stockholders of a corporation, upon policies issued to themselves, as owners, upon property belonging to the corporation. A sole stockholder is not the owner of corporate property, nor is his interest like that of an owner. All he is entitled to is a share in the profits while the corporation exists, and on its dissolution a share in any assets which remain after

the corporation's debts are paid; if the corporation be insolvent when the loss occurs, he loses nothing, since his interest is of no value, while an owner loses the value of his property whether he is insolvent or not. *Syndicate Ins. Co.* v. *Bohn*, 65 Fed. Rep. 165.

CORPORATIONS — ULTRA VIRES CONTRACT — RESTITUTION. — The C. Co. leased its property to the P. Co., including cars, patent rights, and contracts with railroad companies. The lease was executed under an Act which was secured from the legislature of Pennsylvania, and which was supposed by all parties to authorize the action. The P. Co. took possession and carried on the business for fifteen years, when they repudiated the lease, and resisted the payment of rent on the ground that the lease was in excess of the lessor's authority. This contention was finally sustained by the courts. The C. Co. now seeks in equity to obtain restoration of or compensation for the property transferred under the lease, which the P. Co. refuses upon the ground that it was not responsible for the property, because transferred under an unlawful contract. *Held*, the lease was made under a statute, which in the opinion of the parties authorized them to make it. All that can justly be said is that, in view of the decision of the court, the parties misconstrued their authority, and that the lease is consequently *ultra vires*. That the execution of this contract does not involve moral turpitude seems clear, and the P. Co., which had received the property of the C. Co. without right and has repudiated the contract, must account for this property to the C. Co. *Pullman Palace Car Co.* v. *Central Transp. Co.*, 65 Fed. Rep. 158.

That the ultimate result of this case is sound seems clear. There are one or two points, however, which may be noted. The court decide the case by the application of the rules governing unlawful contracts in general. The denial rests on the fact that the property was transferred under an unlawful contract. "The following propositions respecting such contracts may be affirmed with confidence . . . third, that the courts will interfere to compel restitution of property received under such contract by one who repudiates, except when the contract involves moral turpitude" (p. 161). Now, it is submitted that with regard to illegal contracts in general, there is much conflict of authority on this point. Keener on Quasi Contracts, p. 267, *et seq.* Another proposition which the court lays down in regard to unlawful contracts is, that the courts will not interfere for the relief of either party when they have been executed, and the contract in the principal case is treated generally as executory. Bearing in mind that this was a lease for ninety-nine years, of which fifteen had expired, and also that plaintiff had transferred all its property to the defendant, it would seem that to consider this as an executory contract does not accord very well with the language used in *St. Louis, &c. R. R. Co.* v. *Terre Haute, &c. R. R.*, 145 U. S. 393, which was a Bill in Equity filed by lessor corporation against the lessee to set aside an *ultra vires* lease for nine hundred and ninety-nine years, of which seventeen had elapsed, during which the defendant had operated the road. Mr. Justice Gray in dismissing the bill says, "When the parties are in *pari delicto* and the contract has been fully executed on part of the plaintiff by the conveyance of property, neither a Court of Law nor a Court of Equity will assist the plaintiff to recover back the property conveyed. . . . The contract has been fully executed on the part of plaintiff by the actual transfer of its railroad and franchise to the defendant, and the defendant has held the property and paid the stipulated consideration from time to time for seventeen years. . . ." The court in the principal case dispose of the case just cited by saying that it decides that the court will not set aside an unlawful contract which has been so far executed as to make this inequitable. It is submitted that the case is decided on too broad grounds; that it would have been better to base the decision on the peculiar nature of corporations rather than on the grounds which have been considered, as to the soundness of the decision in its result. See Morawetz on Corporations, § 721; Taylor on Private Corporations, § 314; Spelling on Private Corporations, § 167; Waterman on Corporations, § 161.

DAMAGES — LIBEL — RETRACTION. — *Held*, in an action for libel that an offer to plaintiff's attorney to publish any retraction that he might write, made after the commencement of the suit, could not be shown in mitigation of damages. *Turton* v. *New York Recorder Co.*, 38 Fed. Rep. 1009 (N. Y.).

Such an offer made directly to plaintiff could only show absence of malice, and would be admissible only when the action was for exemplary damages. But as this action was against the proprietor of the newspaper, and not against the writer of the article, it was not for exemplary damages. *Haines* v. *Schultz*, 50 N. J. Law, 481. The refusal to write such a retraction on the part of plaintiff's attorney did not prevent defendant from publishing a retraction, and would not be an excuse for not doing so. A retraction is not an act in which both parties must join. The court says that evidence of a retraction, published soon after the institution of the suit when the suit was begun without previous notice to the defendant, would be admissible. This is a point on which there is surprisingly little authority, but this is not inconsistent with the New

York rule, holding repetitions after the beginning of the suit inadmissible merely because that would lead to assessing damages twice for the same act. *Daly* v. *Byrne*, 77 N. Y. 182.

ELECTRIC RAILWAY — ADDITIONAL SERVITUDE — TELEPHONE COMPANY — RESPECTIVE RIGHTS. — A telephone company strung wires along the street, under a statute which authorized it so to construct its line, provided the ordinary use of the street was not obstructed. Afterward, a street railway company substituted electricity for horses as a motive power, thereby seriously impairing the telephone service. *Held*, (1) that the railway, operated by the overhead, single trolley system, was within the ordinary use of the street as intended by the statute. (2) That the railway company was liable to the telephone company for expenses incurred in erecting higher poles to prevent the telephone wires conflicting with those of the former company, the railway company having needlessly placed its poles on the side of the street occupied by the telephone company. (3) That the railway company was not liable for the induction caused in the telephone wires by its own stronger current, the existence of the weaker telephone current in the street being viewed as "such obstruction of the street as plaintiff is forbidden to create." (4) That, as the current required for the single-wire system of the telephone caused "no hurtful disturbance of natural electrical conditions," and as the violent and varying currents of the railway did cause such disturbance, whereby the telephone service was impaired by conduction or leakage through the earth, the railway company was liable for the damage thus incurred. Two justices dissent upon the first point, another upon the second, and two others upon the fourth. *Cumberland, &c. Co.* v. *United Electric Ry. Co.*, 29 S. W. Rep. 104 (Tenn.).

As to the first point, the leading case upon this very modern subject, lays down the rule that the mode of use, and not the motive power, is the criterion as to the existence of an additional servitude. *Taggart* v. *Newport Ry.*, 16 R. I. 668. The rule has been frequently quoted with approval, though the decision, and several subsequent ones, have seemed to hold that, in law, the ordinary electric trolley road constitutes no added burden to the fee. *Halsey* v. *Railway*, 47 N. J. Eq. 380; *Railway* v. *Mills*, 85 Mich. 634. But the text-writers agree that the question is still unsettled, and incline to a contrary opinion. See, in addition to the authorities cited, Elliott on Roads, pp. 559-60, and some significant remarks in a late New Jersey case. *W. J. Ry.* v. *C. G. & W. Ry.*, 29 Atl. Rep. 423.

The second point turned rather upon a finding of fact than upon a principle of law. The third and fourth points have usually been treated as one; no decision has been found which so clearly distinguishes between the damages arising from induction and conduction, and refuses a recovery for one, while permitting it for the other. The authorities upon this precise point are meagre, the arguments having proceeded upon the analogies to air, light, and water. The majority and dissenting opinions elaborately discuss the cases which have arisen upon these questions, and the decision as a whole forms a notable addition to the learning upon this interesting branch of the law.

PERSONS — ALIENATION OF AFFECTIONS — WIFE'S RIGHT TO MAINTAIN THE ACTION UNDER MODERN STATUTES. — Statutes provided in substance that a married woman should have as her separate property all rights in action growing out of the violation of any of her personal rights, and should sue in her own name. *Held*, that a married woman could maintain an action for the alienation of her husband's affections. *Clow* v. *Chapman*, 28 S. W. Rep. 328 (Mo.).

Whether by the common law a wife had no substantive right to her husband's society and protection, or whether there was such a right, though unenforceable because of the difficulty in procedure, is the point upon which cases of this kind hinge. The older authorities held that the wife had no such right. Cooley on Torts, 227. But the wife certainly had some such right, for in the English Ecclesiastical Courts she could sue for restitution of conjugal rights. Bishop on Marriage, Divorce and Separation, §§ 1357, 1358. Accordingly when statutes have given a married woman a right to sue in her own name, thus removing the difficulty in procedure, there remains no reason why a wife should not maintain this action, and the modern authorities all agree in allowing her to do so. *Haynes* v. *Nowlin*, 129 Ind. 581; *Bennett* v. *Bennett*, 116 N. Y. 584.

PERSONS — HUSBAND AND WIFE — EFFECT OF SEPARATE PROPERTY ACTS ON THE HUSBAND'S RIGHTS IN AN ESTATE IN THE ENTIRETY. — Where land is granted to a husband and wife they hold as tenants in common or joint tenants of the use during their joint lives, and on a mortgage of the land by the husband and foreclosure thereof, the grantee becomes a tenant in common with the wife during the joint lives of the husband and wife and owner in fee of the whole, if the husband survive the wife. *Hiles* v. *Fisher*, 39 N. E. Rep. 337 (N. Y.).

It was decided in *Bertles* v. *Nurnan*, 92 N. Y. 152, that the separate property Acts relating to married women had not done away with estates in the entirety. The principal case decides that, while the nature of the estate is not changed the rights of the husband to the possession and income of the property during the joint lives, which depended not on the nature of the estate, but on the general principal of common law that the husband is entitled to his wife's property, is taken away by the statute, and that the wife is entitled to the possession and usufruct jointly with her husband. It is sometimes held that when the nature of the estate is not changed by the separate property acts, neither husband nor wife can transfer any interest without the consent of the other. *McCurdy* v. *Canning*, 64 Pa. St. 39.

PROPERTY — APPLICABILITY OF REGISTRY LAWS TO LEASE — RENEWAL CLAUSE — NOTICE. — Mass. Pub. Sts. c. 120, § 4, provide that "a lease for more than seven years from the making thereof" shall not be valid against a *bona fide* purchaser for value without actual notice, unless recorded. An unrecorded lease for five years, providing that the lessee was to have the privilege of renewal "for the further term of five years," was *held* to be within the statute, so as to give the lessee no right to compel a renewal at the end of the first five years, the land having passed to a *bona fide* purchaser who had no actual notice of the unrecorded instrument. *Toupin* v. *Peabody*, 39 N. E. Rep. 280 (Mass.).

The case does not call for a decision of the question whether such a lease is wholly void as against the purchaser, or whether it may be good for the first term of less than seven years; and the court is careful not to pass upon it. No case has been found upon this precise point. The court follows Massachusetts authority in holding that the fact that defendant knew that plaintiff was in possession as tenant, did not amount to the actual notice required by the statute. *Lamb* v. *Pierce*, 113 Mass. 72; *Keith* v. *Wheeler*, 159 Mass. 161. In *Cunningham* v. *Pattee*, 99 Mass. 248, it was decided that such knowledge amounted to notice of the nature of the tenant's interest, of the existence of a written lease, and of its contents, including a covenant to renew. The principal case is distinguished upon the ground that in *Cunningham* v. *Pattee* the two terms aggregated less than seven years, so that the statute had no application. The case is clearly within the purpose of the statute, though these decisions would seem to indicate that knowledge of a fact may amount to notice of the contents of a lease for seven years or less, while not equivalent to the actual notice required for leases of a longer period. The registry laws of the various States are considered in 1 Devlin on Deeds, c. 21, 22.

PROPERTY — CHATTEL MORTGAGE — DELIVERY. — Where a mortgage is delivered to a third person for the benefit of a mortgagee who is ignorant of its existence, his acceptance as of the time of delivery will not be presumed when this will defeat the intervening rights of attaching creditors of the mortgagor. *Kuh et al.* v. *Garvis et al.*, 28 S. W. Rep. 847 (Mo.); *Ensworth* v. *King*, 50 Mo. 477, overruled.

The doctrine of the English courts laid down in *Doe d. Garmons* v. *Knight*, 5 B. & C. 671, and *Xenos* v. *Wickham*, L R. 2 H. L. 296, that the question of delivery is wholly one of the intention of the obligor, and that a deed may become binding before the obligee knows of its existence, has received little support in this country when a strict application of the doctrine would affect the intervening rights of creditors. In *Merrills* v. *Swift*, 18 Conn. 257, the rights of such creditors were subordinated to those of the mortgagee, and the acceptance was said to relate back to the time of delivery. This has not been followed, however, and has been stated to be doubtful law. 1 Jones on Mortgages, § 502. On the other hand, Wisconsin, New York, New Hampshire, Michigan, Indiana, Massachusetts, Texas, Arkansas, and Kentucky have reached a conclusion contrary to *Merrills* v. *Swift*.

PROPERTY — FIXTURES. — *Held*, that an arrangement between vendor and vendee of machinery which is to be attached to the realty, that the title shall remain in vendor until payment, is not binding upon a subsequent mortgagee of the realty who has no notice of this arrangement. *Wade* v. *Donan Brewing Co.*, 38 Pac. Rep. 1009 (Wash.).

This seems clearly sound, and is in accord with *Southbridge Savings Bank* v. *Exeter Machine Works*, 127 Mass. 542. A contrary decision would work injustice to the mortgagee, who may have relied on these articles as part of the realty in taking the mortgage. A recent decision in Vermont holds conversely that a statute allowing "machinery attached to, or used in a shop, mill, printing office, or factory" to be mortgaged as realty does not apply where the machinery is put in subsequently to the execution of the mortgage. *Kendall* v. *Hathaway*, 30 Atl. Rep. 859 (Vt.). In such a case the mortgagee would have all he could have relied on without the fixtures. The distinction between these cases is well shown in *Davenport* v. *Shants*, 53 Vt. 546.

PROPERTY — SEVERANCE FROM THE FREEHOLD BY A TRESPASSER. — A suit brought by a landowner against defendant, an innocent vendee of a trespasser, who

had cut logs from plaintiff's land, came up on exceptions to the Supreme Court of Florida, which laid down the following rule as to assessing damages in cases of this kind, viz.: Where the defendant is an unintentional or mistaken trespasser, or an innocent vendee from such mistaken trespasser, the value at the time and place of its first conversion. *Wright et al.* v. *Skinner*, 16 So. Rep. 335 (Fla.).

The Florida court hold that an innocent vendee from an innocent trespasser will only be liable for the same damages as the innocent trespasser himself. But it is submitted that this is not sound. The vendee commits a wrong when he purchases the property, which, though out of the possession of the plaintiff, is still owned by him. He is guilty of a conversion at the time of sale and must be liable to plaintiff for the value of the goods at that time. But granting that he stands on the same footing as the trespasser, yet the Florida court is still in error in its ruling. They allow as damages the value at the time of first conversion, which they say is *when the logs are first taken from the plaintiff's land.* They cite a number of decisions to uphold their view. But most of those cases go directly against it, and hold that damages in case of unintentional trespass shall be the value of the trees, or whatever the several chattels may be, *as they stood in the ground.* This is quite different from giving the value when they had been removed from the plaintiff's land and been trimmed and increased in value, as was the case at bar. The Florida court proceed on the basis that a trespasser cannot get possession of the trees till he has taken them off the land owned by the plaintiff. This is not sound, as is shown by the fact that larceny cannot be committed by severing articles from the realty if the act is continuous and no reverting of the articles after severance, when they are chattels and thus subject to larceny, takes place. *Reg.* v. *Townley*, 12 Cox, C. C. 59. The Florida court must have mistaken the cases which they cite as supporting their view on this point, which is wrong, as well as the first one. *Forsyth* v. *Wells*, 41 Pa. St. 291, the first of a long line of concurring cases, and 2 Sedg. Dam., 8th ed., § 500 *et seq.*, uphold the view here advanced.

SALE OF GOODS — PURCHASER FOR VALUE — PRE-EXISTING DEBT. — The question before the court being whether a naked pre-existing debt is such a consideration or payment for the transfer of goods as will defeat replevin by the original vendor, who sets up fraud in the purchase from him, the Michigan Supreme Court held, Montgomery & Hooker, JJ., dissenting, that it is not such a consideration. *Schloss* v. *Feltus*, 61 N. W. Rep. 797 (Mich.).

The court say that though one who discharges a pre-existing debt in exchange for a negotiable instrument may be regarded as a purchaser on good consideration, one who does so in exchange for other chattels is not so regarded. Although this seems to be the general authority, one cannot help seeing the justice of the view taken by the dissenting judges. It would seem that their opinion is the correct one on principle, and that no valid distinction can be made between negotiable paper and other chattels. *Work* v. *Brayton*, 5 Ind. 396; *Frey* v. *Clifford*, 44 Cal. 335. In New York, one who takes even a negotiable note and gives in exchange a discharge of a pre-existing debt is not regarded as a purchaser for valuable consideration. *Lawrence* v. *Clark*, 36 N. Y. 128; *Weaver* v. *Barden*, 49 N. Y. 286.

SALES — FACTORS ACT, 1889 — HIRE AND PURCHASE AGREEMENT. — Plaintiff let a piano to Sullivan under the ordinary hire and purchase agreement, by which the piano was to become the property of the "hirer" when a certain number of monthly instalments had been paid, but until the full amount was paid it was to remain the property of the "owner" — plaintiff. Before all the instalments were paid, Sullivan sold the piano to defendant, and was convicted of larceny under Statute 24 & 25 Vict. c. 96. By section 100 of this statute it is provided that on conviction the property shall be restored to the owner, and the court before whom the offender is tried shall order restitution, "Provided also that nothing in this section shall apply to the case of any trustee, banker, merchant, attorney, factor, broker, or other agent intrusted with the possession of goods or documents of title to goods," etc. Under this, counsel for prosecution applied for an order of restitution, and it was refused. Plaintiff now brings this action to recover from defendant damages for the conversion. *Held*, that he could not recover; that under the Factors Act title passed to defendant, as the piano was sold him by a person holding it under an agreement to buy; and that although the Factors Act did not in terms repeal the 24th & 25th of Victoria, yet it did in effect as far as this restitution was concerned. *Held* also, that under the Sale of Goods Act of 1893, providing that "where goods *have been stolen* and the offender is prosecuted to conviction, the property reverts to the owner," plaintiff cannot maintain this action; that although this Act of 1893 was capable of the construction claimed by plaintiff — *i. e.* contrary to Factors Act — such was not the proper one when it was borne in mind that this Sale of Goods Act was passed to consolidate the law. "The true way of

dealing with the words 'have been stolen,' was to treat them as subject to the express limitation already created by statute, especially when the reasons for their limitation were so recent." *Payne* v. *Wilson*, 11 *The Times* Law Rep. 179 (Q. B. D .).

The interesting matter in this case is the way the court construes the various statutes. *Helby* v. *Matthews*, [1894] 2 Q. B. 262, and *Lee* v. *Butler*, [1893] 2 Q. B. 318, have already settled that the hire and purchase agreements enabled the "hirer" to pass a good title under the Factors Act. There can be no question but that the Factors Act of 1889 meant to brush aside any previous legislation opposed to its spirit; and as far as that point goes there can be no doubt as to the soundness of this case. Nor, on the whole, can there with reference to the Sale of Goods Act. The reasoning of the court, that this was meant to consolidate the law, and that the policy which produced the Factors Act of 1889 was not meant to be changed by that codification, seems unanswerable.

TORTS — FALL OF CHIMNEY — RULE OF RESPONSIBILITY OF OWNER. — In an action to recover compensation for the damage caused by the fall of a mill chimney during a heavy wind, the plaintiff requested the court to charge the jury that the defendant was liable, unless the fall of the chimney was due to inevitable accident, or the wrongful acts of third persons. This charge the court refused to give, but instructed the jury that the defendant was liable only in case he had failed to exercise ordinary care. After verdict for the defendant the plaintiff brought the case up on exceptions, and the court held that though the instructions requested by the plaintiff were not entirely correct, they were sufficiently so to warrant it in sustaining his exceptions to the charge as given. It is thus plainly stated that the correct rule for determining the responsibility of the defendant is expressed neither in the instructions requested by the plaintiff, nor in those given by the court, but what that correct rule is, this court has failed to state in any intelligible form. *Cork et al.* v. *Blossom et al.*, 38 N. E. Rep. 495 (Mass.).

See NOTES, 8 HARVARD LAW REVIEW, 224.

TORTS — INFRINGEMENT OF RIGHTS OF PRIVACY. — *Held*, that where a person has so placed himself before the public that he may be called a public character neither he, nor, after his death, his representative has any right to object to the reproduction of his photographs; but that a private individual, independently of contract, has a right to be protected in the representation of his portrait in any form; it is a property as well as a personal right; and belongs to the class of rights which forbids the reproduction of a private manuscript or painting. *Corliss et al.* v. *E. W. Walker Co. et al.*, 64 Fed. Rep. 280.

See NOTES, 8 HARVARD LAW REVIEW, 280.

TORTS — MAINTENANCE. — Action to recover on an agreement to pay solicitors' costs in a criminal action prosecuted by one H. Defence, that it was illegal as tainted with maintenance. *Held*, that as it was for the public benefit that a person should be entitled to prosecute; maintenance, however morally unjustifiable, was in a criminal action not illegal. *Grant* v. *Thompson*, 11 *The Times* Law Rep. 207, Wills and Wright, JJ. See next case, and NOTES.

TORTS — MAINTENANCE. — The present defendant assisted X. in a libel suit against the present plaintiff, growing out of transactions in which substantially the same libel had been uttered against the present defendant. *Held*, that this came within no recognized exception to the law against maintenance, and that the plaintiff had a cause of action accordingly. *Alabaster et al.* v. *Harness et al.*, [1895] 1 Q. B. 339. See preceding case and NOTES.

TORTS — MALICE. — The posting of a placard headed "Trollope's Black List," giving the names of non-union men employed by the plaintiff, is restrainable by injunction. The cause of action is not libel, but malice. Obiter dictum of Lord Field in *Mogul, &c. Co.* v. *McGregor et al.*, [1892] Ap. Cas. 51 followed. *Trollope et al.* v. *London Building Trades Federation*, 11 *The Times* Law Rep. 228. (Kekewich, J., Chan. Div.) See NOTES.

TORTS — MALICIOUS INTERFERENCE WITH BUSINESS — BOYCOTT. — The defendant, an association composed of delegates from a number of trades unions, issued circulars calling upon all friends to boycott the plaintiff's newspaper, because the plaintiff determined to use "plate matter" in the make up of his paper, contrary to an interdictive resolution of the Typographical Union, and to cease buying and advertising in the said paper, intimating that whoever did not do so would incur the enmity of organized labor. *Held*, an action will lie for damage caused to plaintiff by loss in circulation and advertising. A malicious injury to another's business by an otherwise lawful act

is actionable, and an act is malicious in point of law if done intentionally and without legal excuse. Injunction granted. *Barr* v. *Essex Trades Council*, 30 Atl. Rep. 881 (H. J.)

This case adds one more well considered decision to the rapidly increasing number of cases supporting the proposition laid down by Bowen, L. J., in *Mogul Steamship Co. v. McGregor*, L. R. 23 Q. B. D. 598, that an act which causes damage to another, though lawful in itself, may become actionable if done without just cause or excuse. It is to be regretted that so able an opinion as the present, and one that contains such an exhaustive review of the cases in support of the decision, does not deal with any of the mass of authorities the other way. *Heywood* v. *Tillson*, 75 Me. 225; *Payne* v. *Ry. Co.*, 13 Lea, 507; *Boyson* v. *Thorn*, 33 Pac. Rep. 492; *Chatfield* v. *Wilson*, 28 Vt. 49; *Mahan* v. *Brown*, 13 Wend. 261; *Phelps* v. *Nowlen*, 72 N. Y. 39. Such cases as these are all within Lord Bowen's broad rule. There are, however, the possible distinctions, that in the principal case the boycott involved threats or intimidation, thus bringing the case within the principle of *Tarleton* v. *M'Gawley*, Peake, 205, and that an act, though not actionable when done by an individual, may become so when done by a combination conspiring together. *Curran* v. *Galen*, 22 N. Y. Supp. 826. But see *Delz* v. *Winfree*, 80 Tex. 400. A glance at the cases shows that the question is very far from being solved, but the present case reaches the result that is to be desired. 7 HARVARD LAW REVIEW, 180; 21 American Law Review, 509, 764.

TORTS — TRESPASS — INEVITABLE ACCIDENT. — Where the defendant's cab-driver, without negligence, tries to turn down a side street, on account of a break in the harness at the brink of a steep descent, and the horse runs into the plaintiff's shop window, it is *held* that trespass will not lie, since the act was neither negligent nor voluntary on the part of the driver. *Peacock* v. *Nicholson*, 11 *The Times* Law Rep. 225 (Q. B. D.).

This affirms the decision in *Stanley* v. *Powell*, [1891] 1 Q. B. 86, and seems perfectly sound. The court distinguish the case of negligence and that of intentionally inflicting one injury for the purpose of avoiding another, and, since no blame at all is attached to the accident, allow no recovery for it.

TRADE MARK — FANCY WORD "MAZAWATTEE." — Application to strike off the register certain trade marks consisting of or combining the word "Mazawattee" on the ground that it was a descriptive word, inasmuch as the last part, "wattee," meant in Cingalese an estate, and the first part, "Maza," meant relish in the Hindu language, and that taken together the word conveyed the impression that the tea sold under this name came from Ceylon. *Held*, In England this word was meaningless. To Hindus it was also meaningless, because they could not understand the last part, nor was it intelligible to the Cingalese, for they could not understand the first part. The word therefore had no meaning in any known language, and could not be called descriptive. *In Re Densham & Sons' Trade Mark*, 11 *The Times* Law Rep. 184 (Chan. Div., Romer, J.).

The court intimates that the decisions have gone too far in holding certain words to be descriptive, and especially throws doubt on the soundness of the decision in *In Re Jackson's Trade Mark*, 6 Rep. Pat. Cas. 81, which held that the word "Kokoko" was not allowed to be registered because the word in the language of the Chippeway Indians meant an owl, and, as an owl is a common mark on certain Manchester goods, it was held that the word was not a good "fancy" word, inasmuch as it was not known how long it might not be before there was a trade with these Indians in Manchester goods, in which case these goods might be confused with those marked "Kokoko." Romer, J., in the principal case, says that under the peculiar circumstances he would have left the Chippeway Indians to take care of themselves. See on this point Browne on Trade Marks, 2d ed., §§ 33, 547.